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# Harold W. Bodon et al v. Emil Suhrmann et al : Reply to Appellants' Addendum to Brief

Utah Supreme Court

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### Recommended Citation

Reply Brief, *Bodon v. Suhrmann*, No. 8715 (Utah Supreme Court, 1958).  
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APR 4 - 1958

Clerk, Supreme Court, Utah

Case No.

**UNIVERSITY UTAH**

**MAY 3 1958**

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Case No.

8716

EMIL SUHRMANN, et. al.,

REPLY TO APPELLANTS' ADDENDUM TO BRIEF

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attack to be made upon the oral arguments of counsel presented at hearings on appeal matters.

The attention of this Honorable Court is respectfully invited to the comments and arguments made in the briefs filed on behalf of these parties in said matters. We believe the trial court rightfully entered a judgment of no cause of action in favor of Noorda and Guss because of the law applicable to the factual situation. Their Company, Jordan Meat & Livestock Company, did no manufacturing and was merely the wholesaler of the mettwurst which was sold to defendant Suhrmann in a raw and completely unprocessed state, and Suhrmann thereafter undertook to process the product and finish it for sale to his retail customers. As was pointed out in our respondents' brief on file herein, pages 9 and 10 thereof, Suhrmann repeatedly

testified that he dealt only with Hoffman, and the jury found in the special verdict that at no time was Hoffman acting as the agent for Noorda or Guss. This was one of the reasons the trial court entered a judgment of no cause of action in favor of these respondents and against each of the plaintiffs.

Of course the fundamental reasoning of the trial court was that these respondents could not be held liable on any negligence theory when all of the evidence was to the effect that defendant Suhrmann purchased the mettwurst raw and then failed to smoke the same in accordance with the standards prescribed by the health authorities. The smoking and heating is all one and the same process and the minimal temperature of 137° Fahrenheit is so moderately low that the product would not be cooked as

counsel for appellants would try and mislead this Court into believing.

We have sought to adequately set forth the position of respondents in the written briefs on file herein and therefore again respectfully invite this Court's attention to the same, as therein expressed is what we believe the law to be when applied to the factual situation at hand. Appellants' counsel is therefore not correct in his apparent assumption that we rely only upon the proposition that the evidence did not sustain any finding of negligence, as that is only one of the grounds we urged in the argument contained in the written briefs filed herein on behalf of the respondents.

Respectfully submitted,

HURD, BAYLE & HURD  
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Mailed 3 copies of the within Reply to  
Appellants' Addendum to Brief to

RAWLINGS, WALLACE, ROBERTS & BLACK,

Attorneys for Plaintiffs and Appellants,  
Judge Building, Salt Lake City, Utah,  
this \_\_\_\_\_ day of April, 1958.

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F. Robert Bayle